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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 1207

ROBERT ALAN LAWRENCE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, Central Division, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

1. OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals is not yet reported. It is in the Record, pages 11-22. It is also set forth as Appendix A to this petition.

2. STATUTORY PROVISION SUSTAINING JURISDICTION

The judgment of the Court of Appeals was entered on December 16, 1966 [R. 23];* also see Appendix B to this petition. This Petition for Writ of Certiorari is filed within the required thirty days' time, as extended by order of Mr. Justice Douglas (Appendix C).

The jurisdiction of this Court rests on Section 1254 (1) of the Judicial Code, 28 U.S.C. The district court had jurisdiction under 18 U.S.C. § 3231.

3. QUESTION PRESENTED AND HOW RAISED

The sole question presented is whether a Selective Service System registrant, raising his claim for a conscientious objector classification for the first time after receiving an Order to Report for Induction (SSS Form No. 252), is, nevertheless, entitled to the procedural safeguards provided in section 6 (j) of the Universal Military Training and Service Act, 50 U.S.C. App. § 456 (j).

4. STATUTES AND REGULATIONS INVOLVED

Involved are the First Amendment, § 456 (j), of the Universal Military Training and Service Act of 1951, as amended (50 U.S.C.A. App.) and 32 C.F.R. § 1625.2. They are set forth in Appendix D.

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*R. refers to the Transcript of Record.

5. STATEMENT OF THE CASE

The indictment charged petitioner with a violation of the Universal Military Training and Service Act, 50 U.S.C. App. § 462 [R. 2-]; that he became a registrant of Local Board No. 83 of the Selective Service System in the County of Los Angeles, State of California and that having theretofore been duly classified in Class I-A, did knowingly refuse and fail to comply with the order of his said Local Board No. 83 to submit to induction into the armed services of the United States [R. 2].

Petitioner pleaded not guilty, waived jury trial and was tried on November 30, 1965 [R. 4]. A written motion for judgment of acquittal was filed [R. 3]. The motion was denied and the petitioner was found guilty on November 30, 1965, and on the same day was sentenced and admitted to bail pending appeal [R. 4].

The motion contained all of the grounds that the appellant relied upon for reversal of the judgment in this case [R. 3].

6. THE FACTS

Appellant registered with Local Board No. 83 on January 19, 1962 [Ex. 1-2].*

On April 7, 1964, he executed and filed the Classification Questionnaire (SSS Form No. 100), answering all questions that were applicable to him [Ex. 4-9].

On June 8, 1964, the local board classified him in Class I-A [Ex. 11].

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*Ex. refers to the Government's Exhibit, the selective service file of appellant. The pagination is ordinarily pencilled at the bottom of each sheet of the exhibit.

On April 26, 1965, the local board mailed him an Order to Report for Induction [Ex. 11, 18].

On June 28, 1965, he asked for and was given the Special Form for Conscientious Objector. He executed it and filed it with the local board on June 30, 1965 [Ex. 11, 35-44].

The local board disposed of his claim perfunctorily, depriving him of the opportunity to secure the appellate opportunities provided by the Act [Ex. 11].

7. REASONS FOR GRANTING WRIT

POINT I

The conflict of viewpoint between the Second and the Ninth Circuits requires resolution.

The sole question raised by this petitioner calls for resolution of the conflict between the Second Circuit's *Gearey* decision (*Gearey* v. *United States*, 368 F.2d 144, 2 Cir., 1966) and the Ninth Circuit's decision in petitioner's case.

The question is a national one because (1) the reach of the Selective Service System is into every hamlet; (2) the "calls" for induction show every indication of continuing; (3) the percentage of registrants professing conscientious objections to war, is not decreasing, and therefore numerically more persons are affected by the conflict in the law and (4) it is a known fact that most people do not cross bridges or make hard decisions until confronted with them, youth especially. Therefore, the question of "late" filing is one that frequently arises in all federal district courts and is crucial to the liberty of all involved, outside of the Second Circuit.

At present, in the eastern states of the Second Circuit it is recognized, as stated by the unanimous court "The

realization that induction is pending, and that he may soon be asked to take another's life, may cause a young man finally to crystallize and articulate his once vague sentiments." [150, of *Gearey*].

At present, in the western states of the Ninth Circuit it is unclear what respect and consideration is to be given to the rationale above expressed, and this is true also in all other parts of the country.

8. ARGUMENT

A. Intent of Congress

Congress intended that registrants professing conscientious objections to bearing arms be given special administrative consideration. All other administrative appeals go directly to the Appeal Board, for immediate decision. 32 C.F.R. § 1626, et seq. Although the record in this case does not have anything on the following subject, we can present persuasive court records to show that the volume of work, in the relatively short time these boards devote to the work, results in short shrift to the *ordinary* appellant.

The administrative appeals of those registrants professing conscientious objection, however, get a good, careful, congressionally provided special appellate procedure. Congress so directed by Title 50, U.S.C. App. § 456 (j) and the President implemented the intent of the act in 32 C.F.R. § 1626.25.

This special procedure includes a lengthy and thorough inquiry by the F.B.I. Interviewed are the registrant's neighbors, teachers, class mates, employers, etc. He then is given an open-end [unhurried] hearing by a lawyer, a department of justice hearing officer. Thirty or more

days before this hearing he is sent a resume of the inquiry and informed he may rebut or explain any derogatory statements in it by his own statements, affidavits, letters, witnesses and may even bring a lawyer, a privilege he is forbidden to have at any Selective Service System hearing.

Thereafter, his claim is reviewed by a Department of Justice specialist in Washington [also a lawyer], who composes a three page, single-space analysis and recommendation to the Appeal Board. The registrant is sent a copy of this letter, in time to study it and send in a rebuttal, if he so desires, within 30 days.

Petitioner Lawrence had none of the above opportunity.

It need not be argued that this deprivation was prejudicial. However, we must meet the argument that will be made, namely (1) that a deadline is desirable from an administrative point of view, (2) that one has been established [32 C.F.R. § 1625.2. See Appendix D], that the Order to Report for Induction is the deadline point and (3) petitioner's evidence came in after the deadline.

We concede all the above but urge that with respect to this class of registrants the deadline provision of the regulation is contrary to the intent of Congress.

Congress declared in § 456 (j) of the Universal Military Training and Service Act, 50 U.S.C. App., that:

> "*Nothing* contained in this Title shall be *construed* to require *any* person to be subject to combatant training and service in the armed forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." (Emphasis added).

We argue that the deadline regulation is in derogation of the act, and, with respect to this one class of registrants is void.

(1) Court Opinions

There has been some debate and difference of opinion in the lower courts over this but it is novel to the Supreme Court.

The Ninth Circuit earlier took a position in *Boyd* v. *United States,* 9 Cir., 1959, 269 F.2d 607, similar to its present one in petitioner's case and there is at least one trial court opinion agreeing, *U. S.* v. *Monroe,* S.D. Calif. 1957, 150 F. Supp. 785.

On the other side, in addition to *Gearey* (which we will comment on at length), there are several well-reasoned opinions supporting our view:

In *United States* v. *Underwood,* 151 F. Supp. (E.D. Pa. 1955), the court held:

> "Regulation 1625.2 is clear. We believe Sec. 6 (j) of the Act, 50 U.S.C.A. Appendix, Sec. 456 (j), is equally clear. That section provides: 'Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reasons of religious training and belief, is conscientiously opposed to participation in war in any form.' It is plain that a person meeting the conditions of the above section of the Act is not to be subjected combatant training and service. This privilege is not to be defeated by procedural regulations. *Nowhere in the Act does it provide that unless the registrant makes his claim before the notice of induction he thereafter waives his right to the privilege. Had congress so intended, it would have set forth such intention in unmistakable terms.* See United States ex rel. Hull v. Stalter, 7 Cir., 1945, 151 F.2d 633, 635; United States v. Clark, D.C. W.D. Pa. 1952, 105 F. Supp. 613, 615. Although in both of the cited cases the claim of conscientious objector was made prior to the time notice

> for induction was sent, the reasons given in support of the holdings apply to the present criminal action." (Emphasis added) [876].

United States v. *Crawford,* N.D. Calif. 1954, 119 F. Supp. 729:

> ". . . the sole legal question before the Court is whether an executive regulation may circumvent the clear language of the statute. To pose the question is to answer it. While Regulation 1625.2 is not invalid on its face, it can have no applicability to a claim of conscientious objection, *whenever made,* so as to deprive the objector of a hearing at which he may prove his good faith." (Emphasis added).

Boyd v. *United States, supra,* expressed disapproval of *Crawford,* but *the correctness of Underwood has never been questioned by the Third Circuit. Underwood* has been expressly followed in the most recent decision on this point in the Eastern District of Pennsylvania, *U. S.* v. *Vick,* unreported (E.D. Pa. Cr. #2292, Sept. 22, 1965, per Judge Luongo). That the District Judges in the Third Circuit do not agree with the Ninth Circuit, and find no authority in the Third Circuit compelling them to accept the Government's argument, is indicated not only by *Underwood* and *Vick,* but also by direct holdings and persuasive dicta of District Judges in the Western District of Pennsylvania, and the District of New Jersey. See *United States* v. *Zasadni,* 206 F. Supp. 318, 221, n. 3 (W.D. Pa. 1962) (distinguished on facts, but *Underwood* implicitly approved in case where "registrant, after being ordered to report, for the *first* time claimed to be a conscientious objector"); *United States* v. *Brown,* 129 F. Supp. 237, 238 (D. N.J. 1955) (validity of § 1625.2 seriously questioned); *United States* v. *Clark,* 105 F. Supp. 613, 615 (W.D. Pa. 1952) (regulations limiting right of appeal must give way where "An Act of Congress creates that right without

any express limitation. . ."); see also *Sorenson* v. *Selective Service System*, 203 F. Supp. 786, 792 (E.D. Pa. 1962) (citing *Underwood*, "When a registrant comes within the provisions of that statute, his privilege cannot be defeated by a procedural regulation. . .").

Additionally, the Third Circuit, in a case involving a claim for deferment as a divinity student, has held that notwithstanding § 1625.2, it is the Local Board's *duty* to reopen and consider on the merits a changed status resulting from enrollment in divinity school,

> "even though, as here, an order to report for induction has been sent to the registrant, provided he has not yet been inducted." *United States ex rel. Berman* v. *Craig*, 207 F.2d 888, 891 (3d Cir. 1953).

The intent of Congress clearly was that this class of registrants be given all appellate opportunities, not short-circuited.

(2) Law Review Articles

Commentators, as well as courts, have reached this conclusion:

> ". . . the tenor . . . .[of the statute] . . . suggests that the right to claim an exemption was intended to be available up to the moment of induction. . . ." Clancy and Weiss, "The Conscientious Objector Exemption: Problems in Conceptual Clarity and Constitutional Considerations", 17 Maine L. Rev. 143, 146 (1965).

The Yale Law Journal agrees:

> "There are strong arguments from the language of this and other portions of the conscientious objector statute which suggest a construction conferring absolute immunity from combatant or, in some cases, non-combatant service upon any individual who

demonstrates in a compliant manner his bona fide reaction to participation in military service. An attitude favoring granting of the exemption is further indicated by the provision for special procedural safeguards against limitation by hostile claim boards *or presidential re-definition of the matter.* And the absence of a Congressional distinction between objectors who come to realization of their beliefs early and those whose objections become firm in later years suggests a disinclination to discriminate on the basis of the age of choice, as long as the choice is honest." (Emphasis added and footnotes omitted).

* * *

". . . the structure of the statute strongly suggests induction as the intended ultimate date for reopening of classification. Courts denying the applicability of Regulation 1625.2 to conscientious objectors have relied on the absoluteness of the exemption, fastening upon the statement of section 6 (j) that 'Nothing contained in this [Act] . . .' shall require subjection to combatant training and service of any conscientious objector whose beliefs are religiously based. The prohibitive impact is increased when this phrase is read in the context of the scrupulous care which Congress has taken elsewhere in the statute to ensure that no good faith claim for the exemption will be refused. Unlike unsuceessful claimants for any other exemption, the conscientious objector claimant is given a statutory right to appeal. Similarly, his appeal is first referred to the Department of Justice 'for inquiry and hearing' and the Department then submits its findings to the appropriate Selective Service Appeal Board. Moreover, in making this inquiry the Department of Justice is instructed to look, not to the length of time during which the objector has had his religious feelings, but to his good faith at the present moment. This participation of the Department of Justice is apparently designed to introduce a governmental agency less intimately associated with the armed forces than the

> Selective Service System and less hostile to the granting of conscientious objector status. Such intrusion of a disinterested investigative body into the appeals hierarchy is unique to the conscientious objector exemption and further signifies the pronounced congressional solicitude for those who seek the exemption." (Footnotes omitted). "Pre-Induction Availability of the Right to Claim Conscientious Objector Exemption," 72 Yale L.J. 1459, 1460, 1465-1466 (1963).

(3) Supreme Court Expressions

This Court has already taken a close look at the administrative remedies provided by Congress. *Estep* v. *United States*, 327 U.S. 114, 122-123 (1945).

In *Estep* a vigorous attack was made on the constitutionality of denial of judicial review on the merits, and it received serious consideration by the Court, as is apparent from Mr. Justice Douglas' majority opinion, and the concurring opinions of Mr. Justice Murphy, Mr. Justice Rutledge, and Mr. Justice Frankfurter.

Narrow judicial review was sustained, but only after the Court carefully scrutinized the entire Selective Service process, and noted all of the administrative remedies available. This is rendered most explicit in Mr. Justice Frankfurter's concurring opinion, 327 U.S. 114, 134 at pp. 137 and 144:

> "Congress deemed it imperative to secure a vast citizen army with utmost expedition. It did so with due regard for the individual interests by giving ample opportunities, within the elaborate system which it established, for supervision of the decisions of the multitudinous draft boards on the selection of individuals for service."

* * *

". . . Congress also authorized an appeal from the local board to an appeal board and ultimately to the President. *Congress has not given to the local board authority to decide when such statutory rights of appeal may be availed of,* nor to make 'final' unwarranted action by a board whereby such appeal is frustrated. . . . Accordingly, if a registrant does not obey an order of induction because the board has cut off the opportunity which the statute gives him to appeal to higher authority, his obligation of obedience has not yet matured. Therefore he has not yet failed to discharge his obligation under the Act. The duty to obey is not merely a duty to obey an order of the draft board, but to obey such an order after it is no longer subject to review within the Selective Service System." [Emphasis supplied].

Thorough administrative review, as the justification for restricting judicial review, is both explicit and implicit in later decisions of the Supreme Court. Thus, in *Witmer* v. *United States,* the Court emphasized in detail the entire administrative scheme immediately prior to restating the absence of direct judicial review, 348 U.S. 375, at 376-377. In *Simmons* v. *United States,* the Court reiterated, in several places, the crucial necessity of a fair hearing, "in accordance with the statutory plan and the concepts of basic fairness . . .", 348 U.S. 397, at 405. And in *Gonzales* v. *United States,* the Court stressed that a pre-condition of administrative finality was a meaningful hearing and appeal, 348 U.S. 407, at 412-413.

The teaching of the Estep case is that anything less than the full administrative review may raise grave constitutional questions. Mr. Justice Douglas' majority opinion evinces this concern, 327 U.S. 114, at 119-120. And in *Simmons* v. *United States, supra,* the court characterizes the requirement of a fair hearing as a "fundamental safeguard." 348 U.S. 397, at 406.

Petitioner in this case was denied all of his valuable rights of administrative review—rights which, if afforded him, might very well have resulted in his receiving the conscientious objector classification which he sought.

An administrative regulation which is "out of harmony with the statute is a mere nullity"; *Manhattan General Equipment Co.* v. *Commissioner*, 297 U.S. 129, 134 (1936). *Accord*: *U. S.* v. *Maxwell*, 278 F.2d 206, 211 (8th Cir. 1960); *U. S.* v. *Eddy Brothers, Inc.*, 291 F.2d 529, 531 (8th Cir. 1961); *Functional Music, Inc.* v. *F.C.C.*, 274 F.2d 543, 548 (D.C. Cir. 1958), cert. den. 361 U.S. 813 (1959); *Boykin* v. *Commissioner of Internal Revenue*, 260 F.2d 249, 254 (8th Cir. 1958). "A right clearly created by statute cannot be taken away by regulation." *Northern Natural Gas Co.* v. *O'Malley*, 277 F.2d 128, 134 (8th Cir. 1960).

B. Constitutional Considerations

There is a further constitutional consideration. Regardless of whether or not there is a constitutional right to be recognized as a conscientious objector, the statute providing for exemption is a law which protects religious liberty. *Olvera* v. *U. S.*, 223 F.2d 880, 883 (5th Cir. 1955). And there is no doubt that once the statutory right has been established, there can be no discrimination as between varieties of religious belief, so long as the statutory standard is met. See *United States* v. *Seeger*, 380 U.S. 163 (1965).

The recent decision of the United States Supreme Court in *U. S.* v. *Seeger, supra*, provided a broader basis for conscientious objection than that which previously existed. No longer may local boards entertain any suspicions towards claims of conscientious objection which are made by persons who are not members of recognized pacifist churches, or who do not have a long family or

personal history of conscientious objection. It is obviously much easier for a person who had been reared as a Quaker to decide whether or not he is a conscientious objector than it is for a person who must arrive at his decision through independent religious training, belief and thinking. Consequently, such rationale as might have existed prior to *Seeger, supra,* based on an assumption that a person should know if he is a conscientious objector at a relatively early stage in the process, does not exist for registrants of the *Seeger* category.

The Selective Service System recognizes the right of conscientious objection, so long as it is asserted prior to its arbitrarily-imposed cut-off date. Defense Department regulations provide a procedure for the evaluation and determination of post-induction claims of conscientious objection. Department of Defense Directive No. 1300.6, Aug. 21, 1962. But under this scheme, no provision is allowed for the bona fide development of conscientious objection during this interstitial period. This is in effect a denial of religious liberty during such period.

The rationale of *Boyd, supra,* is succinctly stated at the conclusion of the opinion:

> "There must be some end to the time when registrants can raise a claim of conscientious objection to induction, and raise and re-raise an alleged right of review. Any other conclusion would result in chaos." (*Id.* at 612).

This concern about possible chaos does not withstand analysis. First, the total number of men seeking conscientious objector deferment has always been very small,*

*The Court recognized this fact in *Kennedy* v. *Mendoza-Martinez,* 83 S.Ct. 554, 576, for, in its conclusion, the Court observed: "Thus our holding today does not frustrate the effective handling of the problem of draft evaders who leave the United States" and in a footnote to this comment it showed "42. Moreover, the problem is relatively extremely small." [figures given].

and there is no reason to believe that allowing late claimants an opportunity to try to prove their cases will substantially increase the number. Second, a deliberate bad faith applicant, a draft dodger who presents a sham or frivolous claim, will be more likely to present it well within the time limit. Therefore, the persons most likely affected by the cut-off date are the sincere ones who are slow in reaching what must be an awesome decision. Third, as the Yale Law Journal has pointed out:

> ". . . if delay is the major problem, an expedited process of hearing and appeal could be instituted without denying a registrant the right to a hearing and appeal on his claim for exemption." 72 *Yale L.J.* 1459, 1468.

The Journal points out a system could be devised whereby post-notice claimants would receive priority attention. *Ibid.* n. 50. Cf. Title 50, U.S.C. App. § 462 (a), which provides for such priority attention to the trial of Selective Service cases.

Concerning the possible implication that the late filer is insincere:

Messrs. Clancy and Weiss answer that argument in their article in the Maine Law Review, cited *supra*:

> "But of what relevance is the time at which a man announces his objection to war? Should he be condemned if he changes his mind or announces his objection when the draft board announces his impending service? On what reasoning does the condemnation flow? Is it not possible that the impending concrete experience crystallizes his formerly vague sentiments or impels him to state them? Can it be said absolutely that a man is not a sincere objector because his objection originated at draft age, or even at the pre-induction center?"* 17 *Maine L. Rev.* 143, 147.

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*See *Corrigan* v. *Secretary*, 9 Cir., 1954, 211 F.2d 293, for an instantaneous, *last minute* (at *induction*) conversion.

The Yale Law Journal argues that:

> ". . . the regulation is unreasonable as not consonant with the realities of the decision-making processes that conscientious objectors undergo." 72 *Yale L.J.* 1459, 1462.

It continues:

> "Many claims during the post-Order, pre-induction period might be thought to be spurious, prompted more by momentary fears than by deep conviction. Arguably, the typical candidate has had over twenty years to reconcile his beliefs in a Supreme Being with his obligations to perform military service. However, the impact of the Selective Service System structure upon the individual may well be such that the individual may, quite honestly, not be confronted with the final decision until the very weeks surrounding the Order to Report for Induction. An individual's conviction that he is a conscientious objector arises from a constellation of experiences in a family and church setting. It is implausible to assert that any one event in an individual's life is more determinative of his ultimate religious conviction than many others. Given the importance of the decision to claim an exemption, and the social stigma which often attaches to conscientious objector status, it is understandable that many registrants would hesitate to claim the exemption until they felt certain of their own convictions and realized, because of the immediacy of the pre-induction procedures, the inevitablility of a clash between their religious beliefs and combatant activity." (*Id.* at 1463-1464).

C. The Gearey Decision

The unanimous decision of the Second Circuit, in *Gearey, supra*, is strong evidence for acceptance of our thesis.

Appellant Gearey squarely presented the question that concerns us. The Second Circuit said: "On this appeal his principal contention is that although his claim of conscientious objection was not raised prior to receiving a Notice to Report for Induction (SSS Form No. 252), he was nevertheless entitled to the procedural safeguards provided for those claiming to be conscientious objectors in section 6 (j) of the Universal Military Training and Service Act, 50 U.S.C. App. § 456 (j)." [368 F.2d 144, 146].

The Second Circuit then made a review of the facts including the local board's explicit and devastating finding: "Upon the conclusion of the July 6 hearing, the Board informed Gearey that it believed he was not a 'genuine c.o.' and that the facts did not warrant a change in his classification." [147].

The appellate court next reviewed the statutory provisions and the administrative "deadline" regulation [32 C.F.R. § 1625.2. This is Appendix D of this Petition]. After concluding that such a regulation is, generally, an administrative necessity it specifically considered the application of the regulation to those registrants professing conscientious objections. It divided such men into two classes: one, where their views fully matured before the deadline order and the other, where their views fully matured after the deadline order.

The first class is admittedly blocked from either administrative or judicial relief by the deadline order; the second class is not to be blocked, the Second Circuit concluded, for this was not the intent of Congress.

The competing judicial authorities on this crucial phase of the subject were then reviewed, in the text and footnotes [150].

The court then gave its viewpoint: "The realization that induction is pending, and that he may soon be asked to take another's life, may cause a young man finally to crystallize and articulate his once vague sentiments."

The Ninth Circuit's disagreement with this viewpoint of the *Gearey* court in *Parrott* v. *United States*, ... F.2d ....., decided December 12, 1966, was superficial, we respectfully submit. Its argument that "Were it to be followed blindly, there could be no workable Selective Service System" ignores (1) the limited nature of the Second Circuit's holding, (2) the limited number of registrants that could possibly be involved and, (3) that there is an easy cure for abuse. This was pointed out in the discussion above, of the *Boyd* decision and of the Yale Law Journal article under the head "B. Constitutional Provisions."

Finally, concerning the relative respect to be accorded the *Parrott* and the *Gearey* opinions it is to be noted that the Ninth Circuit had no briefing on this "late filing" subject (only a passing reference to the *Gearey* decision, made during oral argument) whereas the Second Circuit had the benefit of thorough briefing.

D. Guide to Construction of the Act

The Fifth Circuit in *Williams* v. *United States*, 5 Cir., 1954, 216 F.2d 350, stated it this way:

> "Congress in its wisdom considered it more essential to respect a man's religious belief than to force him to serve in the armed forces. The draft boards and the Courts are bound to carry out that policy." [352].

We presume to submit that the following is the proper guide which this Court should use in construing the conscientious objector statute. It is that set out by Mr. Justice

Frankfurter, in a not unrelated context in his dissenting opinion in *United States* v. *Nugent*, 346 U.S. 1 (1953):

> "Considering the traditionally high respect that dissent, and particularly religious dissent, has enjoyed in our view of a free society, this Court ought not to reject a construction of congressional language which assures justice in cases where the sincerity of another's religious conviction is at stake and where prison may be the alternative to the abandonment of conscience. The enemy is not yet so near the gate that we should allow respect for traditions of fairness, which has heretofore prevailed in this country, to be overborne by military exigencies." [12-13].

CONCLUSION

For the reasons given certiorari should be granted and the judgment should be reversed.

Respectfully,

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